

# Exhibit 7

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
MALLINCKRODT PLC, et al, Case No. 20-50850 (JTD)  
824 Market Street  
Wilmington, Delaware 19801  
Debtors.  
Monday, November 23, 2020  
MALLINCKRODT PLC, et al,  
vs. Adv. Proc. No. 20-50850 (JTD)  
STATE OF CONNECTICUT, et al.  
.

TRANSCRIPT OF TELEPHONIC HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 2:02 p.m.)

2 THE OPERATOR: Thank you, Your Honor. Recording  
3 has begun, and we are now live.

4 THE COURT: Thank you.

5 Good afternoon, everyone. This is Judge Dorsey.  
6 We're on the record in Mallinckrodt PLC, Case Number 20-  
7 12522.

8 Before we begin, just a reminder, if you wish to be  
9 heard, please use the raise your hand feature on the Zoom  
10 call. It makes it easier for me to identify who wants to  
11 speak. I see Mr. Gott already has his hand up.

12 And if you are in the waiting room, if you're not  
13 on CourtCall, if you didn't sign up for CourtCall, we do not  
14 allow you into the Zoom meeting. And if you're signed up on  
15 CourtCall, but you're not using a proper name, we do not  
16 allow you in, either, in order to avoid having disruptions to  
17 the Zoom call.

18 So, with that, I'll go ahead and turn it over to  
19 debtors' counsel to run the agenda.

20 MR. GOTT: Thank you, Your Honor. Jason Gott from  
21 Latham & Watkins. We are here today for the debtors' omnibus  
22 hearing in the Mallinckrodt PLC matter.

23 We filed an updated agenda today at Docket Number  
24 611. It's a long agenda, but there's really only one matter  
25 that's contested, and that's a tribute to the engagement and

1 the cooperation that we're continuing to get from all corners  
2 here in the cases, and that includes the U.S. Trustee, who  
3 has been very helpful and very cooperative with their  
4 comments, from our (indiscernible) parties, from the  
5 committees, and from our secured creditor constituency.

6 To preview the hearing briefly, all that remains  
7 from the agenda, after Your Honor entered several orders on  
8 certification, are three of the debtors' retention  
9 applications, a motion seeking authorization to execute  
10 certain intercompany restructuring transactions, and our bar  
11 date motion. We'll plan to take them up in that order for  
12 efficiency's sake because the bar date motion is the one  
13 topic where we're going to have some argument, so we propose  
14 to save that for last, unless Your Honor would prefer to  
15 proceed differently.

16 THE COURT: No, that's fine. Thank you.

17 MR. GOTT: All right. First up then are the  
18 debtors' retention applications for Latham & Watkins at  
19 Docket Number 384, for Wachtell, Lipton, Rosen & Katz at  
20 Docket Number 382, and for Ropes & Gray at Docket Number 380,  
21 and those are Agenda Items 15 through 17. And I lumped them  
22 together because I think the resolution of the three is the  
23 same (indiscernible) today.

24 As Your Honor heard during the November 20th  
25 hearing, just on Friday, there was an obligation filed by the

1 Acthar plaintiffs group to these retentions. After the  
2 scheduling discussion at that hearing, the Acthar plaintiffs  
3 withdrew their objection and filed a limited objection in its  
4 place at Docket Number 604. And based on the statements on  
5 the record of the November 20th hearing, based on our  
6 correspondence with counsel to the Acthar plaintiffs and the  
7 statements and the limited objection that they filed, our  
8 understanding is that the orders approving these three  
9 retention applications today are uncontested.

10 And so, presuming that's the case, I'll just  
11 proceed with some housekeeping around declarations and the  
12 orders. But I'll pause now to make sure that we are  
13 proceeding on that basis.

14 THE COURT: Okay. Is there anyone who disagrees  
15 that, as of -- for today's purposes at least, the retention  
16 motions are unopposed?

17 (No verbal response)

18 THE COURT: Okay. You may proceed, Mr. Gott.

19 MR. GOTT: Thank you, Your Honor.

20 So, to address the housekeeping, we request that  
21 the declarations filed in support of the three applications  
22 be admitted into evidence, and these are the following:

23 For Latham's retention application, those are the  
24 declaration of George Davis and the declaration of Stephen  
25 Welch, which were both attached to the application at Docket

1 Number 384, as well as the supplemental declaration of George  
2 Davis, filed at Docket Number 589, to address certain  
3 requests from the U.S. Trustee.

4 THE COURT: Mr. Gott, that last -- the last name  
5 you just said did not come through. There was some rustling  
6 of papers that cut you off.

7 MR. GOTT: Okay. No problem. That reference is to  
8 the supplemental declaration of George Davis, filed at Docket  
9 Number 589.

10 THE COURT: Okay. Thank you.

11 MR. GOTT: For Wachtel's retention application,  
12 those declarations are Philip Mindlin, and also Stephen  
13 Welch, both of which were, likewise attached to the  
14 application at Docket Number 382; as well as the supplemental  
15 declaration of Philip Mindlin filed at Docket Number 588,  
16 likewise, to address certain requests from the U.S. Trustee.

17 And for Ropes & Gray's retention application, the  
18 relevant declarations are those of Brien O'Connor and of  
19 Stephen Welch, which were attached to the application at  
20 Docket Number 380.

21 Each of these witnesses -- Mr. Welch, Mr. Davis,  
22 Mr. Mindlin, and Mr. O'Connor, are present on the call for  
23 today's hearing and are available for cross-examination. But  
24 we would request that these declarations be admitted into  
25 evidence.

1 THE COURT: Is there any objection?

2 (No verbal response)

3 THE COURT: They're admitted without objection.

4 (Welch Declaration Re: Latham received in evidence)

5 (Welch Declaration Re: Wachtell received in evidence)

6 (Welch Declaration Re: Ropes received in evidence)

7 (Davis Declaration received in evidence)

8 (Davis Supplemental Declaration received in evidence)

9 (Mindlin Declaration received in evidence)

10 (Mindlin Supplemental Declaration received in evidence)

11 (O'Connor Declaration received in evidence)

12 MR. GOTT: Thank you.

13 Turning briefly to the forms of order, just as a  
14 point of order, we uploaded revised forms of order for the  
15 Wachtell and Ropes & Gray retentions that addressed certain  
16 comments from the United States Trustee's Office.

17 For the Wachtell order, the one substantive change  
18 was to add a paragraph around the treatment of Wachtell's  
19 retainer. For the Ropes order, there is, likewise, a change  
20 regarding the retainer held by Ropes, as well as an added  
21 statement that Ropes will use reasonable efforts to avoid  
22 duplication of services with the debtors' other  
23 professionals. And both of those revised forms of order were  
24 approved by the U.S. Trustee and were shared yesterday with  
25 the committees and with the Acthar plaintiffs. And for the

1 third order, for Latham's retention, there have been no  
2 changes from the originally filed version.

3 And so, absent any questions from Your Honor, we  
4 would request entry of the orders approving the Latham, the  
5 Wachtell, and the Ropes & Gray retention applications.

6 THE COURT: Okay. I have no questions. I did  
7 review the redlines, so I'm satisfied.

8 Is there anyone else who wishes to be heard?

9 (No verbal response)

10 THE COURT: Okay. I'm satisfied then, based on the  
11 record, that the requested relief is appropriate and the  
12 retention of the three firms is appropriate, and I will enter  
13 the order.

14 UNIDENTIFIED: (Indiscernible)

15 MR. GOTT: Next on the agenda and for moving  
16 through the hearing is Agenda Item 18, and that's the  
17 debtors' intercompany restructuring motion.

18 And before a short presentation on this item, I  
19 would move the declaration of Matthew Peters in support of  
20 this motion -- which was filed at Docket Number 405 -- into  
21 evidence. Mr. Peters is present on the call for today's  
22 hearing and is available for cross-examination.

23 THE COURT: Is there any objection?

24 (No verbal response)

25 THE COURT: It's admitted without objection.

1 (Peters Declaration received in evidence)

2 MR. GOTT: Thank you, Your Honor.

3 So, by this motion, the debtors are seeking  
4 authority to execute on a series of intercompany  
5 restructuring transactions. The net effect of these  
6 transactions will be to save the debtors from needlessly  
7 incurring as much as 12 million to \$15 million per month of  
8 income tax liability, beginning on December 26th, 2020, at  
9 the start of the debtors' next fiscal year.

10 And while that justification speaks for itself, the  
11 debtors recognize that, as debtors-in-possession, they must  
12 be mindful that there are many, many parties-in-interest out  
13 there, who, when they read this motion and they see the plan  
14 movement of assets and the institution of new liabilities,  
15 that they might be concerned about how all of this could  
16 affect their rights.

17 So the debtors built into this transaction -- and  
18 this is part of both the proposed order, and will also be  
19 part of the transaction documents themselves -- there are a  
20 number of protections for creditors. These include what the  
21 Court would have seen described in the motion and in the  
22 order. We have special provisions that will be placed in the  
23 new notes being issued that subordinate those notes to other  
24 claims and limit their recourse and principal amounts, based  
25 on the value of the issuer's assets against its liabilities.



1           There are provisions in the order that the claims  
2           and interests at the transferring debtors will travel with  
3           the assets being moved, and that recourse at the recipient  
4           entity will be cabined between its old claims and its old  
5           assets on the one hand and its new assumed claims and new  
6           received assets on the other hand.

7           And then, finally, we've built in several  
8           reservation of rights for all creditors, especially those who  
9           have engaged with us to make sure that all interests were  
10          properly protected with those goals in mind.

11          And that's an important point here. We've had the  
12          benefit of some really great engagement by all our key  
13          creditor groups to add to and to clarify the form of order,  
14          and that includes our RSA parties, the ad hoc term loan  
15          group, the credit agreement agent, the ad hoc group of  
16          revolver lenders, the trustee under our first and second lien  
17          notes, the unsecured creditors' committee, the opioid  
18          claimants' committee, and also the -- certain of the  
19          counterparties whose contracts we will assume and assign in  
20          these transactions.

21          Of course, each group has been focused primarily on  
22          its own interests and the interests of the creditors they  
23          represent in certain cases. And -- but I think what that  
24          means is that, at the end of the process, we've reached a  
25          balanced resolution. Tax claims and interests will be

1 properly guarded. Go forward relationships are clearly  
2 delineated. And all the parties that have engaged with us  
3 seemingly feel that they will be protected.

4 The resolutions that we've reached are mostly all  
5 shown in the revised form of order we filed in the last  
6 couple of hours at Docket Number 609. We also included a  
7 redline to the originally filed form. And our understanding  
8 is that all substantive comments, at least that we've  
9 received (indiscernible) hearing are resolved by that form of  
10 order. Although I'll note that we are still working on some  
11 language tweaks that we will be working to address with all  
12 the parties after today's hearing. And we expect to be in a  
13 position to file a further revised form of order under  
14 certification, either tonight or perhaps tomorrow.

15 But absent any questions from the Court -- and I'm  
16 happy to walk through either the redline that was filed or to  
17 address specific questions, if there are any -- I think we  
18 would leave it at that, with the intent being to file the  
19 order on certification.

20 THE COURT: Okay. No, I don't have any questions.  
21 I did see the redline before the hearing, so I'm familiar  
22 with the relief that's being requested.

23 Ms. Speckhart raised her hand.

24 MS. SPECKHART: Are you able to hear me, Your  
25 Honor?

1 THE COURT: I can. Thank you.

2 MS. SPECKHART: Great. Good afternoon, Your Honor.  
3 Cullen Speckhart, for the record, of Cooley, LLP, appearing  
4 on behalf of the Official Committee of Unsecured Creditors in  
5 this case.

6 And just briefly, to offer some perspective on the  
7 topic of the intercompany motion, which was filed on November  
8 2nd, after what was clearly a very thorough consideration by  
9 the debtors of their corporate income tax strategy and how to  
10 optimize their structures, in light of recent changes to the  
11 law.

12 The intercompany motion does indicate, as Mr. Gott  
13 just noted, that no creditors will be prejudiced by the  
14 requested relief for a number of reasons. And in approaching  
15 this motion, we were particularly interested in understanding  
16 what those reasons are, and just as importantly, how that  
17 preservation of creditor interest and related protections  
18 could be demonstrated in a way that would allow us to remedy  
19 that no harm to creditors would be done.

20 And in our view, that kind of understanding  
21 requires more than just a high level conception of what the  
22 request entails, but a deeper knowledge of how value is  
23 intended to move within the corporate structure to capture  
24 the tax advantages that we all believe are worthwhile to  
25 pursue. And I have to say the debtors were quite patient in

1 helping us and the committee's tax professionals to get to a  
2 place where we're comfortable in our own awareness of what's  
3 involved in the transaction and in revising the order to  
4 provide for certain tools that will be useful to us in our  
5 efforts to evaluate the economic consequences along the way  
6 and after the fact.

7 So we understood from the very beginning how  
8 critical the timing is here. And while we could have  
9 probably spent several months learning and considering the  
10 finer points of Irish tax law as they operate on the debtors,  
11 we didn't want to cause any detrimental delay. So we worked  
12 very hard to learn the material on a condensed time frame and  
13 to achieve a level of ongoing visibility that we think is  
14 appropriate to test the transactions and their impact on the  
15 interests of unsecured creditors.

16 So we support the debtors in their business  
17 judgment and we're satisfied with the provisions of the  
18 revised order by which the transactions will be implemented  
19 under 363(b)(1).

20 THE COURT: Thank you, Ms. Speckhart. I appreciate  
21 the comments.

22 Mr. O'Neill raised his hand.

23 MR. O'NEILL: Yes, Your Honor. Good afternoon.  
24 Can you hear me okay?

25 THE COURT: I can. Thank you.

1 MR. O'NEILL: Good afternoon, Your Honor. James  
2 O'Neill appearing on behalf of New Pharmatop, LP.

3 New Pharmatop's agreement is being assumed as part  
4 of the transaction, and we've worked with Mr. Gott and his  
5 team on language, which has been incorporated into the form  
6 of order that appears in the revised order at Paragraph 14.  
7 It includes the cure amount for New Pharmatop and also terms  
8 regarding the payment.

9 We're appreciative of the debtors' help in getting  
10 us to this point. And our informal comments are resolved as  
11 a result of this language being added to the order. Thank  
12 you.

13 THE COURT: Thank you, Mr. O'Neill.

14 Anyone else wish to be heard?

15 (No verbal response)

16 THE COURT: Okay. Mr. Gott, who are you still  
17 needing to negotiate some of the language with, or at least  
18 tweak some of the language with?

19 MR. GOTT: That is a -- there's a complicated  
20 answer there because each one of the gives and takes requires  
21 some back and forth between different constituencies. But we  
22 hope to have it all resolved very shortly.

23 There -- I think the -- what's left to be done are  
24 mainly clarifications around a particular -- the reference  
25 dates used in various provisions of the order and whether

1 the, you know, potential harm to creditors or the base line  
2 against which any perceived harm to creditors would be  
3 tested, you know, just clarifying that that will be as of  
4 immediately before the restructuring transactions are  
5 implemented.

6 THE COURT: Okay. Thank you, Mr. Gott.

7 All right. Well, based on the representations and  
8 the record presented, I'm satisfied that the requested relief  
9 is appropriate and subject to receipt of the final version of  
10 the form of order under COC. I will enter the order when I  
11 receive it.

12 MR. GOTT: Thank you, Your Honor.

13 And that takes us, last, to Agenda Item 14, back up  
14 the agenda. Next, the debtors' bar date motion, filed at  
15 Docket Number 270.

16 The bar date represents an important step here  
17 toward plan confirmation and emergence, as it always does.  
18 The claims information to be gathered by the bar date process  
19 will allow the debtors to allocate recoveries for general  
20 unsecured creditors and to funnel that information into the  
21 disclosure statement, to make sure voting creditors have  
22 appropriate information, as required under the Bankruptcy  
23 Code. So setting the bar date now will ensure that the  
24 debtors can meet their milestones and proceed on the pace  
25 that they currently carry towards confirmation.

1           We're proposing to send out notices of the bar date  
2           within five business days after filing our schedules and  
3           statements. And so, in all likelihood, that period will  
4           begin likely during the last week of the year or even to the  
5           first day or two of the new year, given that our deadline to  
6           file the schedules and statements is December 24th.

7           We received comments on the proposed form of order  
8           from several parties, including the U.S. Trustee, certain  
9           funded debt creditors, and the Official Committee of  
10          Unsecured Creditors. We filed a revised form of order this  
11          morning at Docket Number 607.

12          The most material change from those comments is  
13          that we agreed to extend the claims filing period for non-  
14          governmental creditors to 45 days from the original 35. And  
15          that was based on a request from the unsecured creditors'  
16          committee.

17          And there's also been one further change since this  
18          morning, which we tried to circulate quickly ahead of the  
19          hearing, just so no one was caught by surprise, although we  
20          think it's -- we don't think it's contentious. And that was  
21          to add the following proviso at the end of some language that  
22          had been requested by the Chubb Companies, which appears in  
23          Paragraph 19. An the proviso reads:

24                 "Provided further that the debtors and all parties-  
25                 in-interest's rights, defenses, and objections in

1           respect of any claims filed by the Ace Companies or  
2           the Chubb Companies, other than for the express  
3           reasons listed in Subpoints (1) through (3) of this  
4           sentence, are fully preserved."

5           And we'll, of course -- you know, we'll make sure  
6           that that change is apparent to all parties and that they'll  
7           have time to review it and ensure that they have no  
8           objections.

9           But the good news on the front for all those  
10          comments we received is we've resolved the vast majority of  
11          them. And if the motion is granted, then we expect to have a  
12          final form of order to file on certification shortly after  
13          the hearing.

14          And Your Honor, that takes me to the two responses  
15          we've received formally on the docket. Those are the only  
16          objections to the bar date motion, which was filed by the  
17          Acthar plaintiffs at Docket Number 422. We did have  
18          discussions with the Acthar plaintiffs around resolving the  
19          objection, but ultimately, we could not resolve all of their  
20          issues.

21          And we've also been in discussions with the opioid  
22          claimants' committee around the bar date order and the  
23          proposed structure, but there is a difference of opinion  
24          there, as Your Honor may have seen from the OCC's statement  
25          that was filed at Docket Number 566.



1           So, again, aside from those two parties, we have no  
2 other responses to the order at this time. And at this  
3 point, I suggest it may make sense to have counsel for the  
4 Acthar plaintiffs present their objection to the Court.

5           THE COURT: All right. I see Mr. Haviland has  
6 raised his hand. Go ahead, Mr. Haviland.

7           MR. HAVILAND: Good afternoon, Your Honor. So I  
8 want to begin by thanking Mr. Gott for making himself  
9 available to us. As you've heard in the past from others,  
10 the debtors' counsel have been very willing to give up their  
11 time, day and night and over the weekend. And we did receive  
12 some comments over the weekend and tried to get to finality.

13           I don't want to bury the lead, Judge. There were  
14 three issues we raised. One is the bar date itself, one is  
15 the desire of the Acthar plaintiffs to file a class proof of  
16 claim, and the third was concerns about the notice, plan, and  
17 proposal for that.

18           Mr. Gott and I did agree that, with some additional  
19 language that was added to the order at Paragraph 3, you'll  
20 see, Judge, that there's nothing in the order intended to  
21 permit or prohibit any party from seeking permission from the  
22 Court to file a class proof of claim on proper motion. So  
23 that issue has been resolved, Judge, by that language. We  
24 recognize there is a procedure for the Court to decide  
25 whether to allow class proofs of claim. We just wanted to

1 make clear that, by the motion and the Court's order, that  
2 that wasn't precluded.

3 And we're going to be moving forward with that  
4 probably right after the holiday, to get, hopefully, a  
5 briefing schedule with debtors' counsel that we can have that  
6 proceed on a track that Your Honor is comfortable with.

7 And that then takes me to the next two issues  
8 because they key off of that. And just to be clear, Judge,  
9 three of the Acthar plaintiffs that you've been hearing from,  
10 most importantly Rockford, they are putative class  
11 representatives in cases under Rule 23, and have been for  
12 years.

13 And in fact, the debtors' Chapter 11 filing  
14 preceded the Rockford deadline for filing the Rule 23 motion  
15 by five days. It was due to be filed that week. I think  
16 they filed on a Monday; we were going to file our class  
17 motion on Friday. So that was an immediate concern of our  
18 clients, to make sure that we have the opportunity now, in  
19 the bankruptcy, to file a class proof of claim, to allow that  
20 representative status to proceed. But I won't belabor that  
21 issue, Judge. We did reach agreement with the debtors that  
22 that process should take place after this procedure.

23 The bar date was a concern of ours, Judge, because  
24 of the 35 days. It seemed -- and I realize it doesn't line  
25 up with the bankruptcy procedures. But in our world, where

1 we've got thousands and thousands of unsecured claimants who  
2 have purchased Acthar, we're waiting on that notice to know  
3 when to proceed. And Your Honor heard a lot through the  
4 proceedings in the last month about the notoriety of this  
5 case, the 60 Minutes. And so, without getting that notice  
6 and knowing that this has moved to a different phase and the  
7 opportunity now exists to submit an unsecured proof of claim,  
8 we're concerned that the claims won't go file.

9 So that was the discussion I had with Mr. Gott,  
10 about how that might happen, so that we could make sure that  
11 we had a robust notice period, and then enough time for folks  
12 to respond, realizing that mail notice has some issues with  
13 what's been going on with the mail service. I know Your  
14 Honor probably has seen what's happened in the election  
15 arena. And we're just concerned about that bar date being  
16 really too tight for that.

17 It was extended ten days. I will tell Your Honor,  
18 we had originally proposed could we not have the same date as  
19 the Government, April the 12th. I then said to Mr. Gott I  
20 was willing to cut the baby, if you will, and agree to St.  
21 Patrick's Day. And then, finally, my last proposal, as I was  
22 bidding against myself, I said give me March 1, and we can  
23 take that back to our clients and co-counsel.

24 I respect the debtors' counsel had some issues in  
25 terms of that changing of the date from 45 days even two more

1 weeks, but that's where we left it. Our final proposal was  
2 March the 1st, which I think gives us six weeks, as opposed  
3 to the current -- I'm sorry -- eight weeks, as opposed to the  
4 six weeks we currently have. So that's where it is, Judge.

5 I thought that the 60 days was appropriate, given,  
6 as I said, the issues with the mails and responsive periods  
7 and all that's going on in people's lives these days. But we  
8 leave that to the Court to decide. I think we're looking  
9 basically at Valentine's Day versus the 1st of March.

10 And then, finally, on the notice -- I know Your  
11 Honor probably read in our objection -- I'm always interested  
12 in where the Rule 23 procedures align with the Bankruptcy  
13 Code. And all courts recognize the Supreme Court in Mullane,  
14 that first-class mail notice is the best practicable under  
15 the circumstances. And I understand the debtors are  
16 proposing to send first-class mail notice to all known  
17 unsecured creditors. We had some good discussions with Mr.  
18 Gott about that.

19 It's our position that the purchasers of Acthar are  
20 known by the company. Attached to one of our complaints, we  
21 had the actual forms that are filled out by doctors, and the  
22 patients fill it out, as well. So the medication is sent to  
23 people's homes, nurses are sent to their homes, so ...

24 But we did reach an agreement with Mr. Gott that  
25 that is an issue that can be addressed down the road, in

1 conjunction with the class claim process. So I don't want to  
2 tell you that we didn't object to the proposed plan, as  
3 stated, because we thought that the, quote, "unknown  
4 creditors" can be known. But that really gets to a question,  
5 I guess, Judge, of ascertainability [sic] and the  
6 reasonableness of the debtor pulling that data and being able  
7 to mail notice to people's homes.

8 So the bar date issue is a question of two weeks.  
9 The notice, I believe, can be taken up down the road. And we  
10 have agreement on class claims. That was a long way of  
11 saying that I appreciate Mr. Gott's efforts. I thought we  
12 got really far along on an issue of significance to the  
13 Acthar plaintiffs. But we leave it to the Court to decide  
14 how best to proceed. Thank you.

15 THE COURT: Thank you, Mr. Haviland.

16 Ms. Ramsey, you had your hand up.

17 MS. RAMSEY: Thank you, Your Honor. Can you hear  
18 me okay?

19 THE COURT: I can, thank you.

20 MS. RAMSEY: Thank you.

21 Good afternoon. For the record, Natalie Ramsey,  
22 Robinson & Cole, appearing on behalf of the Official  
23 Committee of Unsecured Creditors.

24 Your Honor, as Mr. Gott indicated, we have been  
25 actively engaged in discussions with the debtors, really,

1       since our retention. And the Court may recall that the  
2       official committee is a very diverse group of claimants and  
3       represents really the diversity of the interests of our  
4       constituents. So, accordingly, our comments and our  
5       discussion was very wide-ranging.

6               As Mr. Gott indicated, it's important, first of  
7       all, to talk about the period of time. And the additional 10  
8       days, we think, is a reasonable compromise between our  
9       desire, when we started off, Your Honor, at 60, 90 days, but  
10      recognizing that the debtor has certain milestones in the  
11      RSA, 45 days was an agreeable period to the committee.

12             We also, as Mr. Haviland had talked with the debtor  
13      extensively about ensuring that there was nothing in the bar  
14      date order that would prohibit a party from seeking  
15      permission of the Court to proceed with a class proof of  
16      claim. And Your Honor, now that that is expressly written  
17      into the order and not just absent as a prohibition from it,  
18      we are very much supportive of that.

19             A third significant change, Your Honor, was  
20      providing a non-mandatory provision for holders of debt  
21      claims to file a single master proof of claim.

22             And finally, Your Honor, a significant change to us  
23      was providing that counsel representing un-manifested  
24      asbestos claimants could file a single claim with an exhibit  
25      noting the individuals that they had identified that might

1 have claims based on exposure.

2 As part of that, Your Honor -- and you'll hear more  
3 about this on December the 7th, in connection with the motion  
4 for an FCR -- one of the important aspects to us, also, was  
5 to specifically leave open a door for an eventual 524(g)  
6 trust resolution and channeling injunction for the asbestos  
7 claimants. The debtor has currently indicated that it is not  
8 intending to proceed with that relief, but we didn't want to  
9 foreclose it, and we wanted to make it clear that we were not  
10 foreclosing it through the bar date order.

11 Although we had requested more extensive changes,  
12 Your Honor -- and as the Court knows, some of our committee  
13 members, in their individual capacities, are not satisfied  
14 with the changes that have been made up to this point. The  
15 committee, as a whole, as a fiduciary, has not objected and  
16 supports the bar date order as revised.

17 We finally just wanted to add, Your Honor, again --  
18 you've heard this a lot -- but we appreciate very much  
19 (indiscernible) the debtor working with us to reach this  
20 resolution.

21 THE COURT: Thank you, Ms. Ramsey.

22 MS. RAMSEY: Thank you.

23 THE COURT: Mr. Preis, you have your hand up.

24 MR. PREIS: Good afternoon, Your Honor. Can you  
25 hear me?

1 THE COURT: I can. Thank you.

2 MR. PREIS: Your Honor, Arik -- for the record,  
3 Arik Preis, Akin, Gump, Strauss, Hauer & Feld. We are  
4 proposed counsel to the Official Committee of Opioid Related  
5 Claimants.

6 Your Honor, we -- per the extension granted to us  
7 by the debtors, we filed a very short statement regarding the  
8 motion, it is Docket Number 566. It is not my intention to  
9 repeat the statements we made in that motion, but I do want  
10 to mention a few things to you today and make, basically,  
11 three points. The first is as follows:

12 At the beginning of the case, the debtors announced  
13 that it was their current intention not to seek the  
14 establishment of a bar date for any opioid related claimant.  
15 Although they apparently have reserved their rights to seek  
16 the establishment of an opioid related bar date in their  
17 motion and proposed form of order, nothing in what they have  
18 said to date evidences anything other than their intent not  
19 to seek a bar date for the opioid claimants.

20 We disagree with this decision, and we've had a few  
21 discussions with the debtors about this. Admittedly, the  
22 debtors have been focused on numerous things to date, and so  
23 the depth of those discussions have not been at the level  
24 they deserve throughout absolutely no fault of the debtors.  
25 We hope to continue those discussions, including whether a



1 bar date would be needed for opioid related claimants,  
2 whether there be different proofs of claim forms, the breadth  
3 and extent of a noticing program, et cetera.

4 We understand that nothing in the relief requested  
5 is being -- today would exclude the establishment of a bar  
6 date for opioid related claimants; and, as such, we're not  
7 objecting to the relief being sought today. That being said,  
8 if we are unable to reach our issues -- resolve the issues  
9 consensually, we may be back in front of Your Honor seeking  
10 your assistance in helping us resolve that issue. So that's  
11 the first part.

12 The second point -- because we do believe in  
13 flagging issues for Your Honor, as we try to do each time  
14 we're in front of you -- we wanted to note that we believe  
15 the debtors' decision not to seek approval of an opioid  
16 related claims bar date is closely intertwined with their  
17 motion to appoint a future claims rep, as well as that  
18 proposed rep's request to retain three sets of legal  
19 advisors, one financial advisor, and one investment banker.

20 The debtors have agreed to adjourn the hearing on  
21 the retention of the proposed FCR to December 7th, and our  
22 objection deadline is now this Saturday, November 28th, at 5  
23 p.m. And the debtors' response deadline is Thursday,  
24 December 3rd, at noon.

25 The proposed FCR also agreed to adjourn the hearing

1 on its retention application to December 7th, but was  
2 unwilling to extend the objection deadline for the retention  
3 of its professionals past this Wednesday, November 25th, at 7  
4 p.m. Therefore, again, to flag something for Your Honor,  
5 unless we reach resolution, we will be filing responses to  
6 all six motions within the next six days, but separately and  
7 on different days, unfortunately. In these responses, we're  
8 going to address the relationship between the debtors'  
9 proposed manner to avoid having an opioid claims bar date and  
10 the relief requested in those motions. Again, I raise this  
11 to emphasize that none of this is going to be decided until  
12 December 7th.

13 So, third, because of this timing and because of  
14 our relief -- our belief that the issues are intertwined, we  
15 asked the debtors to modify the order slightly, to insert a  
16 provision stating that the mailing deadline for the relief  
17 being sought today will not occur until the Court makes a  
18 determination with regard to the establishment of a opioid  
19 claims bar date, one way or the other.

20 Given that, as you just heard from Mr. Gott, the  
21 mailing deadline is likely not to occur until the second half  
22 of December, maybe early January, the way we understand it,  
23 we figured that all of the opioid related issues could be  
24 decided, as it relates to the bar date and the FCR, before  
25 then. And then the debtors, perhaps more efficiently, could

1 just have one mailing solicitation date, but with two  
2 different bar dates, two different noticing procedures  
3 potentially, and two different proof of claim forms.

4 The debtors declined to grant our request and told  
5 us merely that the issue that we are raising is not relevant  
6 to today's motion. We disagree. We actually think it's  
7 extremely relevant to ensuring that creditors are not  
8 confused by whatever they may see in publications,  
9 newspapers, or any other noticing forum of communication.  
10 And given that what we're proposing is not going to affect  
11 the time line of the case, we would think that we could and  
12 should deal with it in the month of December, perhaps at the  
13 omnibus hearing scheduled for the 22nd. That will give us  
14 time for the debt -- you know, to talk to the debtors  
15 further.

16 And if they're willing to establish a bar date, we  
17 think that that could occur in the month of December. And if  
18 not, we can resolve it at the December 22nd hearing. We  
19 think the debtors would have to then submit some sort of  
20 written submission as to why they're not going to seek an  
21 opioid claim related bar date, and all the parties would have  
22 a right to object. Again, in taking heed from the  
23 noteholders statement that was filed last week, nothing we're  
24 asking for today would change the time line of the bar date  
25 for the non-opioid creditors.

1 I realize the time line I'm setting forth here is  
2 not something we've put in a motion. But we were a little  
3 surprised, frankly, that the debtors didn't just agree to the  
4 clarification that we asked, given that it doesn't really  
5 affect the timing that they lay out in their motion or their  
6 proposed form of order, nor does it prejudice any creditor or  
7 other party-in-interest in the case. Therefore, again, while  
8 I understand it's a bit unorthodox for me to do this, this  
9 way, we fail to see how anyone is prejudiced. And again, we  
10 were a little bit surprised that the debtors just didn't  
11 agree.

12 Your Honor, with that, unless you have any  
13 questions, that was what we wanted to say.

14 THE COURT: So you're not asking for any relief  
15 today, Mr. Preis.

16 MR. PREIS: The only request we would ask is that  
17 they modify the order to clarify or to confirm that the  
18 mailing date for the non-opioid claimants would not occur  
19 until the opioid related claimant bar date issue has been  
20 resolved. And we would -- you know, we can put a deadline to  
21 that for December 31st or December -- whatever comports with  
22 their already proposed mailing deadline, which, as Mr. Gott  
23 said earlier, I think about ten minutes ago, was probably  
24 likely early January.

25 THE COURT: Mr. Gott? I'll do this first, and then

1 I'll come back to Mr. Haviland's issue. Mr. Gott?

2 MR. GOTT: Oh, I'm sorry. I did not -- I did not  
3 hear you redirect to me.

4 So -- okay. So you'd like me to address the opioid  
5 claimants first. Is that right, Your Honor?

6 THE COURT: Yes.

7 MR. GOTT: Okay. So, look, I think our view here  
8 is that the relief we've requested is -- does specifically  
9 carve out opioid claims. The issue of whether and when to  
10 impose an opioid bar date is for another day, it's for  
11 another motion.

12 And this is our -- this is the debtors' view that  
13 this is the right path forward for proceeding with these  
14 cases, to have a bar date that accepts opioids claims, to  
15 have a future claims representative, and to have all opioid  
16 claims -- regardless of whether they are filed before a bar  
17 date or not -- channeled to the opioid settlement trust. We  
18 think that that is the process that gives -- that actually  
19 gives greater due process and gives greater opportunity for  
20 recovery to opioid claimants.

21 Your Honor, I -- if -- we had not heard previously  
22 a request to put an outside date on what the opioid  
23 claimants' committee is suggesting; you know, in other words,  
24 a -- sort of a parachute that would allow us to start the  
25 process, in the event that there is no resolution by a date

1       certain. That is a new aspect to the relief that they're --  
2       to their request that I could certainly take back and we  
3       could discuss on our side. I just don't have the -- I don't  
4       have the benefit of being able to run around the courtroom  
5       right now, to check with folks and see if they're comfortable  
6       with it.

7               But I think, if the request is simply to just put  
8       on hold this bar date process -- which Mr. Preis just said,  
9       even if we do move forward with an opioid bar date process,  
10      and even if that starts at the same time as the non-opioid  
11      bar date process, it's going to involve different dates,  
12      different proofs of claim form, different publication notice.  
13      It's just a completely separate issue from what we're looking  
14      to establish today. And so we don't see a need or a reason  
15      to tie the two together, and so we just don't think that  
16      that's appropriate at this time.

17             THE COURT: Mr. Preis, it seems like the debtors  
18      have now indicated on the record that they're -- the opioid  
19      claimants are carved out of this order. And they're willing  
20      to continue to discuss with you the issues that you have  
21      concerns about.

22             So, at this point, I don't think there's anything  
23      that I need to do. I think we can just send you back -- and  
24      unfortunately, I can't send you to the hallway to talk about  
25      it before the hearing is over. But it sounds like this is

1 something that can and should be able to be resolved. So I  
2 would ask you to go back and talk after the hearing. And  
3 obviously, we're going to have to submit a revised order  
4 under COC, in any event. So let's handle it that way for  
5 now, I think.

6 MR. PREIS: Thank you, Your Honor.

7 THE COURT: Okay. Thank you.

8 Now to Mr. Haviland's question, Mr. Gott. The  
9 holidays are coming up, 45 days, with all of the things that  
10 are going on with COVID, I do have some concerns that that  
11 might not be enough time.

12 MR. GOTT: Sure, Your Honor. I think I can address  
13 that with a couple of points.

14 First is that, as I mentioned, the mailing is  
15 looking like it will occur -- you know, the letters will go  
16 in the mail very much towards the end of the year, the last  
17 few days of the calendar year. So I think that largely gets  
18 us past the holiday season, when those things will be  
19 arriving in the mailboxes of the folks who will receive them.

20 You know, I think another important point here is,  
21 you know, as is typical for large Chapter 11s, we have a very  
22 smooth, electronic claims submission process through Prime  
23 Clerk's website now that eliminates delays on the back end.  
24 So, once someone receives that notice, it's very easy for  
25 them to go onto the website and get their claim in, as

1       opposed to putting it together in paper, putting it in an  
2       envelope, and then risking the delay on the back end, as well  
3       as on the front end.

4               And Your Honor, you know, I think mailing delays  
5       are certainly nothing new. Yes, they receive more press  
6       lately in connection with election mailings. But you know,  
7       it's not unusual for there to be some delays in the postal  
8       service and in the mail getting to folks. But that doesn't  
9       change and has never changed that the minimum period for  
10      notice here is 21 days under the federal rules, and that our  
11      forty-five-day period is typical, if not on the long end for  
12      bar date periods for large cases in this district. It  
13      (indiscernible) of course not dispositive, but it is just to  
14      say that the period sought here is very much in line with the  
15      norm.

16             And just to clarify one thing, our reluctance to  
17      extend the period further here isn't arbitrary. We are  
18      aiming to have our plan and our disclosure statement on file  
19      well ahead of the February 12th milestone for doing so under  
20      the RSA. And that would allow us to get the notice and  
21      voting process for confirmation started as soon as that bar  
22      date comes and goes and we're able to -- we're able to piece  
23      together information that we need to complete that disclosure  
24      statement. This is an expensive case with a high run rate,  
25      and delay always opens the risk to disruption, to second



1       guessing, and to more delay. So waiting that extra two weeks  
2       would be meaningful here.

3               And so, for all those reasons, we think that that  
4       forty-five-day period is the appropriate resting point here.  
5       We have the support for that period from the unsecured  
6       creditors' committee, from the ad hoc noteholder group, and  
7       our opioid claimants that are party to the RSA, as well. And  
8       so we think that's the right date to stick to.

9               THE COURT: All right. All right. Well, it is  
10      beyond the time required by the Code, 45 days. And if the  
11      mailings aren't going to go out until the end of this year,  
12      or maybe even early January, that puts us past the holiday  
13      time. And we do need to get the proofs of claim filed for  
14      voting purposes.

15              But that doesn't mean, Mr. Haviland, that, if some  
16      individual claimants file claims late, that I won't have the  
17      opportunity to say that those claims can be filed, and they  
18      can still bring their claim against the estate. They might  
19      not have time to be able to vote, but they will have a claim  
20      against the estate. So I'll approve the forty-five-day  
21      period.

22              Mr. Gott, anything else?

23              MR. GOTT: No. Thank you, Your Honor.

24              So, as mentioned, we will -- we'll plan to file an  
25      order with some slight tweaks and any other changes that may

1        arise out of further discussions with the opioid claimants'  
2        committee on certification.

3                THE COURT:    Okay.

4                MR. GOTT:    And with that, I believe, you know, at  
5        least the part of the agenda that we were going to run is  
6        concluded.    And I think Your Honor indicated that a ruling  
7        would be coming on the 105 motion.

8                THE COURT:    Yes.

9                MR. GOTT:    But I think my part of the day is done  
10       here.

11               THE COURT:    Okay.    Thank you, mister -- excuse me.  
12       Thank you, Mr. Gott.

13               Yes, I will issue my bench ruling on the  
14       supplemental motion to extend the stay to certain third  
15       parties.

16               When the debtors filed their petitions, they had  
17       approximately 3,000 proceedings pending against them in  
18       various federal, state, and other fora.    They had also  
19       entered into a restructuring support agreement -- or RSA --  
20       with certain constituencies, including unsecured noteholders  
21       holding more than 84 percent of the fulcrum unsecured notes;  
22       50 Attorneys General of various states, Washington D.C., and  
23       U.S. territories, with respect to opioid claims; and members  
24       of the plaintiffs executive committee, who indicated they  
25       would recommend to more than 1,000 plaintiffs they represent

1 in national opioid litigation that they should also support  
2 the RSA. The debtors had also reached an agreement in  
3 principle with the Federal Government and others related to  
4 debtors' Acthar product. Despite the RSA, however, the  
5 debtors still had approximately 2,650 lawsuits and  
6 administrative actions brought by various government entities  
7 pending against them.

8 The debtors filed a motion for injunctive relief,  
9 the initial motion, seeking a two-hundred-and-seventy-day  
10 stay of all those actions, anticipating that the governmental  
11 entities would argue that the claims they were asserting were  
12 a function of their police powers, and therefore exempt from  
13 the automatic stay provided by Section 362 of the Bankruptcy  
14 Code. Prior to the time of the -- prior to the time for the  
15 hearing on that motion, all of the entities subject to that  
16 motion agreed to the two-hundred-and-seventy-day stay.

17 Ten days after filing the initial motion, the  
18 debtors filed an amended complaint and supplemental motion  
19 for injunctive relief, pursuant to Section 105 of the  
20 Bankruptcy Code, seeking to extend the stay to nondebtor  
21 entities and individuals who are co-defendants with debtors  
22 in certain actions. Those actions include the following:  
23 First, certain securities actions, Solomon v. Mallinckrodt,  
24 pending in the District of Columbia; Healthcor Offshore  
25 Master Fund, LP v. Mallinckrodt, pending in the -- also in

1 the District of Columbia; and Broadhurst [sic] -- Brandhorst  
2 v. Mallinckrodt, also pending in the District of Columbia.  
3 None of the plaintiffs in those three actions objected to the  
4 relief. And since there were no objections made by these  
5 parties, the motion to stay the parties from pursuing actions  
6 against -- the motions to stay the parties from pursuing  
7 those actions will be granted.

8 A fourth action called Strougo v. Mallinckrodt,  
9 pending in the District of New Jersey, the plaintiffs in that  
10 case did file a late objection for the -- and for the reasons  
11 that I'll explain in a moment, that objection will be  
12 overruled.

13 And finally, there's Shenk v. Mallinckrodt, pending  
14 in the District of Columbia. Debtors seek to carve out this  
15 case solely to the extent necessary to permit mediation from  
16 proceeding, which seeks to obtain a settlement in principle,  
17 subject to court approval. I will approve that request and  
18 exclude the Shenk case from the order.

19 In addition to the securities actions, the  
20 supplemental motion also seeks to stay the plaintiffs in the  
21 following actions from pursuing claims against nondebtor  
22 parties relating to debtors' Acthar Gel product: The City of  
23 Rockford v. Mallinckrodt, pending in the Northern District of  
24 Illinois; MSP Recovery Plaintiff, Series v. Mallinckrodt,  
25 pending in the Northern District of Illinois; Steamfitters

1 Local Union 420 v. Mallinckrodt, pending in the Eastern  
2 District of Pennsylvania; International Union of Operating  
3 Engineers Local 542 v. Mallinckrodt, pending in Pennsylvania  
4 Court of Common Pleas; and Acument Global Tech v.  
5 Mallinckrodt, pending in Tennessee Circuit Court.

6 These cases are collectively referred as the  
7 "Acthar litigation matters." The plaintiffs in these cases,  
8 the Acthar plaintiffs, are represented -- they're represented  
9 by the same counsel. For the reasons I am about to explain,  
10 the Acthar plaintiffs' objection to the motion is overruled.

11 I will first address the objections raised by the  
12 Acthar plaintiffs, and then turn to the Strougo securities  
13 litigation.

14 As the Acthar plaintiffs correctly point out, this  
15 Court has subject matter jurisdiction over cases that, quote,  
16 "relate to" a bankruptcy proceeding, pursuant to 28 USC  
17 1334(b). A proceeding is related to a bankruptcy case if,  
18 quote:

19 "-- the outcome of the proceeding could conceivably  
20 have any effect on the estate being administered in  
21 bankruptcy."

22 Pacor v. Higgins, 743 F.2d 984, at 994 (3d Cir.  
23 1984).

24 Thus, if an action could alter the debtors' rights,  
25 liabilities, options, or freedom of action, either positively

1 or negatively, and in any way impacts upon the handling and  
2 administration of the bankruptcy estate, related to  
3 jurisdiction exists.

4 The Acthar plaintiffs argue, however, that the  
5 debtors have not established the existence of related to  
6 jurisdiction. I disagree. The debtors cite to several  
7 factors establishing that related to jurisdiction exists,  
8 including the assertion of indemnity claims by Express  
9 Scripts, a co-defendant in the actions, and its affiliates,  
10 collectively referred as "ESI," by submitting discovery  
11 demands will be placed on the debtors if the actions against  
12 the nondebtors are allowed to proceed; that there is a risk  
13 of collateral estoppel and record taint if the actions are  
14 allowed to proceed; that the ESI defendants will defend the  
15 actions based upon the alleged conduct of the debtors,  
16 damages to the debtors' business if the actions proceed,  
17 including potential impact on the morale and employees that  
18 could result in significant attrition during this critical  
19 time; and disruption of the debtors' reorganization by  
20 causing other parties that have agreed to a stay to their  
21 actions to walk away, including potentially withdrawing from  
22 the RSA. Debtors argue that any one of these factors is  
23 sufficient (indiscernible) related to jurisdiction.

24 The Acthar plaintiffs principally argue that  
25 related to jurisdiction does not exist pursuant to the

1       purported indemnification claims asserted by ESI. They argue  
2       that the three agreements referred to by ESI in asserting  
3       their contractual indemnity claims do not establish a  
4       credible claim for indemnity. In support of this argument,  
5       the Acthar plaintiffs point to the language of the indemnity  
6       agreements and make legal arguments about whether the claims  
7       raised by the Acthar plaintiffs in their cases would fit  
8       within the legal requirements for asserting an  
9       indemnification claim under those agreements.

10               It is not for this Court to make that -- make the  
11       ultimate determination, ultimate ruling on whether the  
12       question -- excuse me. It is not for this Court to make an  
13       ultimate ruling on the question of whether ESI indemnity  
14       claims will be successful. The question is only whether  
15       potential indemnity claims exist. Whatever the ultimate  
16       answer to the question of indemnification, prudence dictates  
17       that the debtor treat its indemnity obligations as very real  
18       and substantial. See *In Re American Film Technology*, 175  
19       B.R. 847 (Bankr. D. Del. 1994) and *Sudbury, Inc. v. Escott*,  
20       140 B.R. 461, at 464 (Bankr. N.D. Ohio).

21               Therefore, based solely on the existence of  
22       potential contractual indemnification claims, the Court has  
23       subject matter jurisdiction. See *W.R. Grace & Company*, 384  
24       B.R. 17, at 28 (Bank. D. Del. 2008).

25               Even if I were to find that the ESI -- that ESI's

1       alleged indemnification claims were not valid, the debtors  
2       have pointed to several other reasons (indiscernible) why  
3       continuing -- excuse me -- why continuation of the litigation  
4       against the nondebtor entities would have an adverse impact  
5       on the debtors' estates. Significantly, the Acthar  
6       plaintiffs themselves describe the litigations as involving  
7       assertions of conspiracy to fix the price of Acthar. The  
8       conspiracy only exists if there's more than one party  
9       involved in the alleged conspiracy.

10               The allegations in the complaint show that the  
11       claims against the debtors and the nondebtors are  
12       inextricably intertwined, creating a risk of collateral  
13       estoppel and record taint that would require the debtors to  
14       participate in the litigation in order to protect their  
15       interests. The Acthar plaintiffs also admit that they would  
16       need to take discovery of debtors' officers and directors in  
17       order to establish their claims against the debtors. And as  
18       the debtors noted, ESI will need to defend itself against the  
19       claims against the Acthar plaintiffs by pointing to the  
20       conduct of the debtors, the party that manufactured and  
21       priced the drug for marketing, especially in light of the  
22       assertions of joint and several liability against debtors and  
23       ESI. Any of these factors could have an adverse impact on  
24       the debtors' estates sufficient to establish related to  
25       jurisdiction under 1334.



1           Having established that the Court does have  
2           jurisdiction, I will now turn to whether the debtors have met  
3           the requirements for imposing an injunction on the  
4           continuation of the Acthar actions against nondebtor  
5           entities.

6           The Acthar plaintiffs assert that, in order to  
7           impose an injunction, the debtors must first establish the  
8           existence of unusual circumstances. These unusual  
9           circumstances exist where there is such an identity of  
10          interest between the debtor and the third-party defendant  
11          that the debtor may be said to be the real party-in-interest,  
12          and that a judgment against the third party will in, effect,  
13          be a judgment against the debtor. Citing to W.R. Grace, 386  
14          B.R. 17, at 33, and American Film Technologies, 175 B.R. 847,  
15          at 851.

16          The Acthar plaintiffs claim that, while both the  
17          debtors and ESI are parties to the same actions, quote:

18               "-- their liability is predicated on different acts  
19               in the conspiracy, and they do not share the  
20               identity of interest required so as to create  
21               unusual circumstances" --

22          Sufficient to meet the standard of imposing an  
23          injunction.

24          As an example, during argument, the Acthar  
25          plaintiffs cite to the Steamfitters case pending in

1 Pennsylvania State Court to say that there are also claims  
2 independent of the debtors; specifically, a breach of  
3 contract claim between the plaintiffs in that action and ESI.  
4 As I will discuss in a moment, I disagree.

5 The debtors counter that they do not need to  
6 establish exceptional circumstances because they can also  
7 show the right to an injunction based on the separate concept  
8 of adverse impact on the debtors' estates. Moreover, they  
9 argue, even if it was necessary to show exceptional  
10 circumstances, the debtors have done so by showing that the  
11 unmistakable focus of the actions is an alleged conspiracy  
12 between the ESI defendants and the debtors to exploit a  
13 monopoly controlled by the debtors. These allegations, the  
14 debtors argue, are sufficient to show an identity of interest  
15 between the ESI defendants and debtors. I agree with the  
16 debtors.

17 It is not necessary to establish unusual  
18 circumstances when the debtor can establish a stay protection  
19 was essential to the debtor's reorganization efforts. As the  
20 Third Circuit recognized in *McCartney v. Integra National*  
21 *Bank North*, 106 F.3d 506, at 510 (3d Cir. 1997), courts have  
22 extended the stay in two circumstances: One, where the  
23 debtor shows unusual circumstances, such that there is an  
24 identity of interest between the third-party defendant and  
25 the debtor; and two, where extending the stay is essential to

1 the debtors' reorganization efforts.

2 Even so, the debtors have shown unusual  
3 circumstances in this case. As Judge Fitzgerald noted in  
4 W.R. Grace, the existence of contractual indemnification  
5 claims is sufficient to meet the unusual circumstances test.  
6 Moreover, in this case, all of the complaints make  
7 allegations of similar conspiracy between debtors and the  
8 nondebtor defendants. It would be impossible to proceed  
9 against the nondebtor defendants only without creating  
10 significant risk of collateral estoppel and record taint, to  
11 the point where the debtors would need to participate in  
12 those actions to protect their interests.

13 The Acthar plaintiffs' example of proceeding  
14 against the ESI defendants in the Steamfitter case is  
15 unavailing for two reasons:

16 First, there is no separate cause of action pled in  
17 that case for breach of contract against the ESI defendants.

18 Second, even if there was, the ESI defendants would  
19 still assert indemnification claims against the debtors --  
20 whether those claims would be valid, as I have said, is an  
21 issue for another day -- and would likely defend the actions  
22 by asserting that the breach was caused by debtors' actions;  
23 i.e., setting the price for Acthar, thus bringing us back to  
24 square one.

25 I will now turn to whether the debtors have met the

1 four-factor test for imposing an injunction. Those factors  
2 are well established: One, the likelihood of success on the  
3 merits; two, whether continuation of the actions against the  
4 nondebtors would cause irreparable harm to the debtors;  
5 three, whether the harm suffered by the Acthar plaintiffs  
6 substantially outweighs the harm to the debtors; and four,  
7 whether the -- whether injunctive relief will further the  
8 public interest.

9 Likelihood of success is determined by whether the  
10 debtor has demonstrated a reasonable likelihood of success,  
11 of a successful reorganization. See *Lane v. Philadelphia*  
12 *Newspapers*, 423 B.R. 98, at 106 (E.D.P.A. 2010), and *W.R.*  
13 *Grace*, 386 B.R. 17, at 33.

14 It certainly is not necessary, at this early stage  
15 of the debtors' cases, to require that the debtors prove that  
16 they have a confirmable plan. As noted in *Lyondell Chemical*  
17 *Company*, 402 B.R. 571, at 590 (Bankr. S.D.N.Y. 2009), quote:

18 "Where the debtors are proceeding on track and have  
19 met the challenges faced so far, that is  
20 sufficient."

21 As I noted at the beginning of this ruling, the  
22 debtors established that they entered bankruptcy with an RSA  
23 that included many of the key players in these cases. They  
24 have added to those numbers since the time of the filing. In  
25 addition, all but a few parties involved in the original

1 motion and this motion have agreed to a stay, pending -- have  
2 agreed to stay the pending litigation against the debtors, in  
3 order to give them the breathing spell they need to work  
4 toward a successful reorganization.

5 The Acthar plaintiffs attempt to undermine this  
6 evidence by pointing to the potential decline in sales of  
7 Acthar, which could have a negative impact on debtors'  
8 revenues, and that the Acthar plaintiffs are not parties to  
9 the RSA. Neither of these points are persuasive, and  
10 certainly do not overcome the overwhelming evidence put on by  
11 the debtors to show that they are, indeed, on track to a  
12 successful reorganization and have met the challenges  
13 presented so far. Therefore, the debtors have met the burden  
14 of showing likelihood of success.

15 Irreparable harm to the debtors. The debtors  
16 presented extensive evidence at the hearing on the potential  
17 harms to the estate if the Acthar litigation goes forward  
18 against the nondebtor defendants. This included the  
19 testimony of Stephen Welch and Randall Eisenberg, who  
20 testified about the burdensome and distracting discovery that  
21 would occur if these actions proceed, the potential indemnity  
22 claims against the debtors, the significant cost the debtors  
23 would incur in participating in discovery, and the potential  
24 significant adverse effects on the restructuring process.  
25 This included parties to the RSA potentially withdrawing

1       their support.

2               They also testified that it would create  
3       significant distraction for senior management, not just in  
4       the discovery process, but also in spending time attempting  
5       to reassure customers, who might want to (indiscernible)  
6       elsewhere for their product in light of the ongoing  
7       litigation taint. This is more than sufficient to meet the  
8       burden of showing that the debtors will suffer irreparable  
9       harm if the Acthar cases can proceed against the nondebtor  
10      entities.

11             As for the potential harm to the Acthar plaintiffs,  
12      debtors contend that the only potential harm to the Acthar  
13      plaintiffs is the delay in being allowed to pursue their  
14      claims, and that delay is not sufficient to overcome the  
15      potential harm to the debtors. The Acthar plaintiffs counter  
16      that, if they are not allowed to pursue their causes of  
17      action against the nondebtors, their unlawful conduct will  
18      continue, causing harm to the patients who must purchase  
19      Acthar.

20             In closing statements, counsel for the Acthar  
21      plaintiffs argued the Court should not bless the antitrust  
22      and RICO conduct of the debtors on its watch. This  
23      presupposes that I am making a finding on whether the  
24      debtors, in fact, committed antitrust or RICO violations. I  
25      am not making any findings on those claims, one way or the

1 other. Those issues are for another day.

2 Similarly, I make no findings that any particular  
3 person will be unable to purchase Acthar because of pricing  
4 issues. No evidence, other than statements of counsel, was  
5 presented on that issue. The debtors contend that they work  
6 with patients to ensure that the -- and the debtors contend  
7 that they work with patients to ensure that those who need  
8 the drug can get it. Therefore, I find that the Acthar  
9 plaintiffs have not shown that any harm to them will outweigh  
10 the harm to the estates, if the injunction is not granted.

11 With regard to whether the injunction will further  
12 the public interest, debtors correctly state that, in the  
13 context of a bankruptcy proceeding, the public interest  
14 element means the promoting of a successful reorganization.  
15 *American Film Technologies*, 175 B.R. at 849.

16 For the reasons I've already articulated, imposing  
17 an injunction to stay the Acthar claims for 270 days  
18 certainly promotes a successful reorganization. Indeed, the  
19 debtors have already done a great deal in pulling together  
20 vastly different constituencies to move these cases forward.  
21 The Acthar plaintiffs assert that the Court, quote:

22 "-- should not prevent action to root out corporate  
23 misconduct occurring on its watch."

24 Once again, this presupposes that the Court is  
25 making findings regarding the nature of debtors' conduct. I

1 am not. The stay being imposed in temporal in scope. It is  
2 not a permanent injunction that will prevent the Acthar  
3 plaintiffs from pursuing their claims. They will have that  
4 opportunity when the time comes. Therefore, the debtors have  
5 shown that public policy favors granting the injunction.

6 I will now turn to the Strougo securities action.  
7 The Strougo plaintiffs do not allege that the Court does not  
8 have jurisdiction to consider the proposed injunction.  
9 Indeed, the only argument the Strougo plaintiffs make is  
10 that, given the procedural posture of the case -- of their  
11 case, no irreparable harm would come to the debtors if the  
12 case can proceed, at least in the near term.

13 They point out that, currently, the only remaining  
14 items to be dealt within the case are the filing of a reply  
15 brief by the debtors, in connection with debtors' pending  
16 motion to dismiss, and perhaps oral argument on that motion.  
17 And they assert that, during the pendency of the motion to  
18 dismiss, no discovery can occur. Counsel also represented  
19 that they do not believe the motion to dismiss will be  
20 decided for at least six months, if not nine months. They  
21 concede, however, that, once the motion to dismiss is  
22 decided, there will either be an appeal, if the case is  
23 dismissed, or discovery would begin.

24 I would note that, given the arguments made by  
25 counsel at the hearing, it would appear that the Strougo



1 plaintiffs are asking us for a lift of the automatic stay to  
2 allow the action to proceed, not only against the nondebtor  
3 defendants, but also against the debtors. No motion to lift  
4 stay has been filed; and, if there were, the burden of proof  
5 would be on the Strougo plaintiffs, not the debtors.

6           Nevertheless, the debtors argue that there would  
7 still be some distraction to management in dealing with the  
8 motion if it goes forward. Indeed, several senior members of  
9 management are the third parties to that litigation. But  
10 there are no guarantees when the District Court might decide  
11 the motion to dismiss, and once decided, the debtors would be  
12 forced to come back to this Court to seek a stay of the  
13 action if it was appealed or to stop discovery from going  
14 forward if it was not, causing further distraction and cost  
15 to the estate in seeking a second injunction.

16           Moreover, if the case proceeded only against the  
17 nondebtor defendants, issues of collateral estoppel, record  
18 taint, indemnification, and depletion of insurance proceeds  
19 to which the debtor is a co-insured with the nondebtors would  
20 create further issues of irreparable harm to the estates.  
21 Therefore, I agree with the debtors and overrule the Strougo  
22 objection.

23           So, based on the ruling, the debtors should submit  
24 a revised form of order, making reference to the Court's  
25 ruling on the record, and I'll enter that order.

1 Any questions?

2 (No verbal response)

3 THE COURT: Okay. And I guess that's all we have  
4 for today. Mr. Gott, nothing further, right?

5 MR. GOTT: That's correct, Your Honor.

6 THE COURT: Okay. Thank you all very much. Then  
7 we are adjourned. I'll see everybody on -- what is it,  
8 December 7th?

9 MR. GOTT: Yes, correct.

10 THE COURT: See everybody December 7th. Have a  
11 good Thanksgiving, stay safe, and we'll see you in a couple  
12 of weeks. Thank you. We're adjourned.

13 COUNSEL: Thank you, Your Honor. Thank you, Your  
14 Honor.

15 (Proceedings concluded at 3:07 p.m.)

16 \*\*\*\*\*

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

A handwritten signature in black ink, appearing to read "Coleen Rand", is written over a horizontal line.

November 24, 2020

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

For Reliable